

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA**

CM/ECF USERS' ADVISORY GROUP

NOVEMBER 14, 2000, MEETING

MINUTES

A meeting of the CM/ECF Users' Advisory Group (UAG) was held on Tuesday, November 14, 2000. The meeting, which was held via video teleconference at the Court's Alexandria, Norfolk and Richmond facilities, commenced at 12:00 noon and concluded at 1:10 p.m. The following persons were in attendance at the meeting: Robert Weed, Roy Lasris, Frank Santoro, Barry Spear, Charles Krumbein, Gregg Nivala, Bill Parkinson, Judge David Adams, Peggy Grivetti, Steve Kopacki, Chuck Miller, Renee Mitchell Paxton, Andrea Redmon, Barry Wells, Dick Napoli and Bill Redden.

Opening Comments (*Bill Redden*)

Bill Redden made some opening comments. Bill noted that those federal agencies that did not have an appropriation for FY 2001 (which included the judiciary) were on a 16th Continuing Resolution (CR). This CR provided funding for those affected agencies (and the judiciary) through December 5, 2000. Bill commented upon the status of H.R. 2415, the bankruptcy reform legislation. The Republican leadership in the Senate had indicated it would re-attempt a cloture vote when both Houses of Congress returned for a planned short term, lame-duck session. Bill also commented upon the Bankruptcy Code Chapter 12 extension legislation. H.R. 5539 would provide for a nine-month extension while H.R. 5540 would provide for an extension to June 1, 2001. The latter bill also includes the Judicial Conference's request for an additional bankruptcy judgeship position. This request incorporates a provision for one temporary bankruptcy judgeship position for the Eastern District of Virginia. Chuck Miller introduced two representatives from PEC Solutions, Inc. who were visiting the Alexandria Division that day. The Administrative Office of the U.S. Courts (AO) had entered into a contract with this firm to secure information that would facilitate the implementation of CM/ECF throughout the judiciary. Bill noted that the minutes from the September 12, 2000, CM/ECF UAG meeting would be sent electronically, along with the November 2000 issue of the *ECF Flier*, to registered users. The CM/ECF UAG had agreed to this procedure at its September 12 meeting. The minutes also will continue to be posted to the Court's CM/ECF home page.

1. ECF Usage and Preparedness Survey (*Dick Napoli*)

The results from the ECF Usage and Preparedness Survey (ECF Survey) have been examined and will be posted to the VAEB ECF home page. All comments appended to the ECF Survey will also be posted. Only the names of those set out in the comments will be redacted. Dick Napoli briefed the UAG on the ECF Survey results. The most significant number of comments centered on the Judicial

Conference—mandated copying fee for electronic case file material. Virtually all of these comments expressed concern that the imposition of the copying for (7 cents per page) will have a chilling effect on the use of ECF. Concern also was expressed that ECF filers would be penalized by the requirement that they pay to electronically access ECF case documents.

[Update: The following is an excerpt from a recently articulated Administrative Office policy position concerning the application of the copying (document retrieval) fee:

[T]he Judiciary originally sought funding from Congress through the appropriation process to provide electronic public access services. Rather than appropriating funds for the electronic public access program, however, Congress, in the Judiciary Appropriations Act of 1991, authorized and directed the Judicial Conference of the United States to prescribe a fee for electronic access and allowed the Judiciary to retain the fees in order to provide this service. All Judiciary electronic access technologies, e.g., personal computers, software, servers, phone lines, and terminals are supported entirely through this fee for access to electronic case documents.

The revenue generated from this fee is the only means used to fund also a full range of electronic public access services, through a variety of methods, so that the Judiciary can provide the public with faster, cheaper, and, in most instances, free of charge methods of obtaining court information. For example, the Judiciary provides voice case information systems for bankruptcy and appellate courts, at no charge. Additionally, the electronic public access fee does not apply to electronic dissemination of local court information, such as local rules, court forms, news items, court calendars, opinions designated by the court for publication, and other local court information, such as court hours, court location and telephone listings. All this information is provided free of charge, but the dissemination costs are necessarily borne by the public access user fee for electronic case documents.

[T]he application of the public access user fee to the Case Management/Electronic Case Files systems will not eliminate attorneys' free access to case documents in cases in which they serve as counsel. In fact, attorneys will initially receive free electronic access to all documents that are normally served upon them. For example, when an answer to a complaint is filed and served electronically, the opposing attorney will receive an e-mail containing notification that the document has been filed and a hyperlink to that document. Using the hyperlink at the time of service, the attorney can then download or print the document, or do both, at no cost. A similar procedure will apply when motions and responses to motions are served. Moreover, should an attorney who has been served with a document which he or she failed to download or print at the time of service then wish to access the document again, there are terminals in each Clerk's Office where all filed documents can be accessed, without cost as has always been the case with paper documents. The courts,

therefore, will continue to make 'freely available' the information which historically has been viewed as the public record.

With respect to services available for the seven cents per page fee for case documents, a primary benefit of the Judiciary's electronic public access services is that users do not incur additional transportation and personnel costs associated with traveling to and from the Clerk's Office or the costs associated with sending a courier to the courthouse to retrieve the information. An attorney has the convenience of being able both to access and print or download a case document not only from an office during normal working hours, but from any location at any time of the day or night. [U]nder the 'paper system,' if a document in a law firm's case file is missing, the attorney or paralegal or a messenger must travel to the courthouse during business hours, wait in the file room to receive the file, search the file, and then wait for copies, at 50 cents per page, to be made. The ease and cost-effectiveness of access to electronic files thus far outweigh the relatively small costs that might be incurred. [T]he electronic access and copying fee of 7 cents per page is 86% less than the 50 cents per page fee charged for paper copies at the courthouse.

A 'flat fee' approach was considered, among others, by the Court Administration and Case Management Committee of the Judicial Conference but was ultimately rejected. One of the problems with this type of fee is that it would be unfair to those whose use of electronic files is limited. It would force these limited users to subsidize thigh volume users. Similarly, an increase in the filing fees would only place a greater burden on the many individuals who file for Chapter 7, while consumer data resellers would be reaping substantial profits without paying any fees to support the system.]

Billing capabilities have been built into Version 1 of the Bankruptcy application for CM/ECF. The court anticipates that the external customer user fee of 7 cents per page will be assessed within 90 days **after** the court converts to Version 1 of CM/ECF. Billing nationally will begin on April 1, 2001. **[Update:** For VAEB, billing, as noted above, will begin within the aforementioned 90-day period, or April 1, whichever occurs later.]

2. Current Status and Information of Interest

a. CM/ECF Server Equipment and Data Transfer Status (*Barry Wells*)

The CM/ECF server equipment has been certified and is ready to receive ECF data for VAEB that resides on AO ECF server equipment. **[Update:** Plans are underway to conduct a "mock" conversion of AO-housed ECF data to VAEB CM/ECF servers during the week of January 22, 2001.]

b. CM/ECF Version 1 Testing Status (*Andrea Redmon*)

Testing of Release Candidate 1 (RC1) of CM/ECF Version 1 commenced at the AO's Independent Test Center on October 23, 2000. Reported defects are in the

process of being evaluated and fixed by AO programmers. The Bankruptcy Court Test Board is scheduled to meet via teleconference on November 28, 2000, to assess how best to recommend proceeding with the national release of Version 1 (i.e., to: release the application without further changes; release the application, but schedule EMR releases to correct significant defects; or, delay the release until specified defects identified by the Bankruptcy Court Test Board and AO staff have been corrected). Peggy Grivetti is a member of the Bankruptcy Court Test Board. **[Update:** Testing has resulted in the re-testing of Version 1 through Release Candidates 2, 3 and 4. Re-testing of Release Candidate 4 was completed on January 19, 2001. Several additional defects have been reported to the AO and AO programmers are fixing these reported defects.]

c. NIBS Conversion Program Update (*Barry Wells*)

Data conversion from NIBS to CM of CM/ECF will be one of the biggest and final steps VAEB will take to implement CM/ECF and turn off the NIBS case management system. VAEB automation staff is working closely with AO staff to complete the development of the NIBS conversion utility. Once VAEB receives this conversion utility from the AO, VAEB automation staff will undertake an extensive 90-120 day internal testing period before the NIBS data is converted to CM.

d. WebPACER Electronic Access Fee (*Bill Redden*)

Please see the "Update" at Item 1. above for information concerning the WebPACER Electronic Access Fee.

e. Designation of Dick Napoli as CM/ECF Project Manager (*Bill Redden*)

Bill reported that effective November 1, 2000, Dick Napoli has been designated as CM/ECF Project Manager.

3. Communication and Training Efforts

a. Training Update (*Andrea Redmon and Renee Mitchell Paxton*)

The CM/ECF Version 1 training tutorial, which is under development by the Federal Judicial Center, is nearing completion and remains set for release by mid-December 2000. The tutorial is designed for remote training (i.e., users will be able to access the tutorial over the Internet as it will be posted at the ECF home page of the VAEB web site). The tutorial is Version 1 compliant.

[Update: The tutorial now is expected for release by the end of January 2001. On January 11, 2001, the Federal Judicial Center undertook a field test of the tutorial at the VAEB's Alexandria Division. The field test was successful.] The tutorial will be demonstrated at the December 1, 2000, TBBA Conference.

b. ECF Presentations/Demonstrations (*Andrea Redmon*)

Since the last UAG meeting, a CM/ECF presentation/demonstration was made at the Judicial Assistants' (to Bankruptcy Judges) national conference. Also planned over the next several weeks are presentations/demonstrations for staff at the U.S. Bankruptcy Court for the Eastern District of Pennsylvania and the TBBA Conference. **[Update:** Both of these presentations/demonstrations were held as scheduled.]

4. Hand-out Materials (*at meeting sites*)

Several hand-out material items were provided to the UAG members and court representatives at the UAG meeting, as follows: (1) an AO press release, dated November 13, 2000, announcing that the Judiciary is seeking public comment on Internet access to court documents; (2) two tables showing VAEB statistics on NIBS and ECF petition filings from July 1999 through October 2000; and (3) CM/ECF prototype court statistics, including VAEB statistics, as of October 31, 2000.

5. Technical Questions (*No questions submitted for meeting through November 8, 2000.*)

At the meeting, a UAG member noted that when prompted to provide an "answer" in an adversary proceeding, the prompt asks for the case number rather than properly for the adversary proceeding number. Court representatives indicated that they would follow up on this matter. **[Update:** The term "case number" is generic, that is, it applies to both Bankruptcy and Adversary filings. We are not able to change this because it is part of the way the system is constructed.]

6. Issues of Interest to UAG Members

a. Chapter 7 Asset Case Files Maintenance by Clerk's Office (*Dick Napoli*)

In December 2000, a notice will be posted stating that effective January 1, 2001, the use of paper case files for Electronic Case File (ECF) Chapter 7 asset cases will be discontinued district wide. Paper files only will be maintained by the Clerk's Office in Electronic Case File (ECF) Chapter 11 cases and adversary proceedings after December 31, 2000. **[Update:** The notice has been posted and the above noted change in practice has been implemented.]

b. Signature Designation on Pleadings and Documents Filed via ECF (*Dick Napoli*)

Dick Napoli reported on an inconsistency in the processing of pleadings and documents between NIBS and ECF cases. In ECF cases, the Clerk's Office has been contacting filers when the "/s/" has not appeared on filed pleadings and documents. In NIBS cases, the practice has been to issue a deficiency notice in those instances in which a signature has not been affixed to a pleading or document filed with the Clerk's Office. All pleadings and documents filed

in ECF cases, with respect to this issue, will be treated consistent with the practice utilized in NIBS cases.

c. ECF Order Processing Software Program Update (*Barry Wells*)

Barry Wells reported on the ECF order processing software program that he is developing. At the Judges' October 30, 2000, meeting, the Judges agreed that Barry should continue development of this program. The Judges offered a number of suggestions for inclusion in the program. It is anticipated that the program will be sufficiently completed during the Winter of 2000-2001 to permit testing with volunteer trustees, attorneys and at least one Judge. The software program would permit the on-line processing of orders in ECF cases.

7. Next Meeting Date, Location(s) and Time

It was agreed that the next UAG meeting would be scheduled for Tuesday, January 23, 2001. The meeting will be held via video teleconference, through Sprint, from 12:00 noon to 2:00 p.m., at the Court's Alexandria, Norfolk and Richmond facilities. UAG members are requested to provide Bill Redden with proposed agenda items, issues of interest and technical questions on a date to be later determined [January 12, 2001]. This will facilitate a review by court representatives of any submitted agenda items and technical questions prior to the next scheduled UAG meeting. An agenda will be sent out for the next meeting [January 19, 2001].

The meeting adjourned at 1:10 p.m.

Respectfully submitted,

William C. Redden